

EXHIBIT "A"

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA**

ROBERT W. MAUTHE, M.D., P.C.
individually, and on behalf
of all others similarly situated,

Plaintiff,

v.

VERSA CARDIO, LLC,

Defendant.

CIVIL ACTION NO.

CLASS ACTION COMPLAINT

1. In 1991, Congress enacted the Telephone Consumer Protection Act ("TCPA"), 47 U.S.C. § 227, to regulate the explosive growth of the telemarketing industry. In so doing, Congress recognized that "unrestricted telemarketing . . . can be an intrusive invasion of privacy." 47 U.S.C. § 227, Congressional Statement of Findings #5. In enacting the TCPA, Congress outlawed telemarketing via unsolicited facsimile, hereinafter "Junk Faxes." 47 U.S.C. § 227. Plaintiff, Robert W. Mauthe, M.D., P.C. ("Mauthe"), is a private medical practice in Center Valley, Pennsylvania, which has long been inundated with Junk Faxes. Mauthe brings this class action to challenge Versa Cardio, LLC's ("Versa Cardio") wholesale issuance of Junk Faxes in violation of the TCPA.

THE PARTIES

2. The Plaintiff, Robert W. Mauthe, M.D., P.C., is a private medical practice in Center Valley, Pennsylvania.

3. The Defendant, Versa Cardio, LLC is a California limited liability company based in Folsom, CA. Versa Cardio, does business in this District.

JURISDICTION

4. The District Court has federal question subject matter jurisdiction pursuant to 28 U.S.C. § 1331.

5. Venue is proper in this district under 28 U.S.C. § 1391(b) and (c) because a substantial portion of the facts and circumstances that give rise to the cause of action occurred here, as Versa Cardio sent the challenged Junk Faxes to this District.

THE LEGAL BASIS OF THE CLASS CLAIMS

6. Mauthe's claims, and those of the class it seeks to represent, arise under the TCPA.

7. Among other provisions, the TCPA forbids Junk Faxes – sending unsolicited advertisements for goods and services via facsimile. 47 U.S.C. §227(b)(1)(C).

8. The TCPA requires that even fax advertisements being sent to those who consented to their receipt, or with whom the advertiser had an established business relationship, must include an Opt Out Notice. 47 U.S.C. §227(b)(2)(D).

9. Among other things, the Opt Out Notice provision requires the sender to clearly disclose in the body of the fax that recipients may request that the sender stop

10. Section §227(b)(3) of the TCPA provides a private right of action:

A person or entity may, if otherwise permitted by the laws or rules of court of a State, bring in an appropriate court of that State, (A) an action based on a violation of this subsection or the regulations prescribed under this subsection to enjoin such violation, (B) an action to recover for actual monetary loss from such a violation, or to receive \$500 in damages for each violation, whichever is greater, or (C) both such actions.

FACTUAL ALLEGATIONS AS TO THE REPRESENTATIVE PLAINTIFF

11. On August 28, 2014 and on at least two subsequent dates Versa Cardio sent a fax advertisement to Dr. Mauthe touting its cellular cardiac monitors as a means to "increase revenues today." Exhibit 1, 2, and 3.

12. This fax advertisement is a form document, addressed to recipients with the preface "Welcome Physician Assistants, General Practice, Family Practitioners, Internists, Cardiologists."

13. Dr. Mauthe did not consent to receive fax advertisements from Versa Cardio.

14. The Junk Fax form does not contain an Opt Out Notice that complies with the TCPA.

15. Versa Cardio sent and continues to send this form Junk Fax to medical offices throughout the United States. A copy of three of the Junk Faxes sent to Dr. Mauthe are attached as Exhibit 1, 2, and 3.

CLASS ALLEGATIONS

16. Dr. Mauthe brings this action under Fed. R. Civ. P. 23.

17. Through the transmission of generic fax advertisements promoting its goods and services, including the Junk Fax it sent to Mauthe, Versa Cardio has engaged in wholesale violations of the TCPA.

18. Based on the generic style of the fax advertisement, the standard telemarketing reach of a Junk Fax campaign, and the geographic distance between Mauthe's Pennsylvania office and Versa Cardio's California locale, Versa Cardio has likely transmitted Junk Faxes to thousands of recipients throughout the United States.

19. Versa Cardio did not obtain the consent of Junk Fax recipients prior to sending them.

20. To the extent facsimile advertisements were transmitted by Versa Cardio to those who had given consent, or had an established business relationship with it, of which there is no evidence at this time, the Junk Faxes still violate the TCPA, as they did not contain the Opt Out Notice required by law.

21. The class that Mauthe seeks to represent is composed of all persons or entities within the United States to whom Versa Cardio sent Junk Faxes promoting Versa Cardio's goods or services at any time within four years prior to the filing of this Complaint through the date a class action is certified in this matter.

22. The class defined above is identifiable by Versa Cardio and its business partners or agents, from the databases used to send the Junk Faxes.

23. There are questions of law and fact common to Mauthe and to the proposed class, including but not limited to the following:

- a. Whether Versa Cardio violated the TCPA by engaging in fax advertising;

b. Whether the facsimiles sent by Versa Cardio to class members constitute unsolicited advertisements; and

c. Whether Mauthe and the members of the class are entitled to statutory damages as a result of Versa Cardio's actions.

24. Mauthe's claims are typical of the claims of the class.

25. Mauthe is an adequate representative of the class because its interests do not conflict with those of the class, it will fairly and adequately protect the interests of the class, and it is represented by counsel skilled and experienced in class actions.

26. Common questions of law and fact predominate over questions affecting only individual class members and a class action is the superior method for the fair and efficient adjudication of the controversy. The only individual question concerns identification of class members, which will be ascertainable from records maintained by Versa Cardio and/or its agents.

27. The likelihood that individual members of the class will prosecute separate actions is remote due to the time and expense necessary to conduct such litigation.

28. Mauthe is not aware of any litigation concerning this controversy already commenced by others who meet the criteria for class membership described above.

29. Mauthe is capable of representing the members of the class.

**CAUSES OF ACTION
COUNT I: VIOLATION OF THE TCPA**

30. Versa Cardio caused Junk Faxes promoting its goods and services to be sent to Mauthe and class members, in violation of the TCPA.

31. By sending Junk Faxes to the class, Versa Cardio violated class members' privacy rights.

32. By sending Junk Faxes to the class, Versa Cardio caused class members to sustain property damage and cost in the form of paper and toner.

33. By sending Junk Faxes to the class, Versa Cardio interfered with the class members' use of their property, as class members' facsimile machines were encumbered by the transmission of Versa Cardio's Junk Faxes.

34. Versa Cardio failed to provide the requisite Opt Out Notice on its Junk Faxes, informing the recipients of their right to cease receiving such advertisements and a cost free mechanism to make such request.

35. Failure to provide Opt Out Notice on a facsimile advertisement is a separate and distinct violation of the TCPA.

36. The TCPA provides for statutory damages in the amount of a minimum of \$500 for each separate violation of its terms.

COUNT II: INJUNCTIVE RELIEF

37. The TCPA expressly authorizes injunctive relief to prevent future violations of the Act.

38. Mauthe, on behalf of the Class, respectfully petitions the Court to order Versa Cardio to immediately cease engaging in unsolicited facsimile advertising in violation of the TCPA.

PRAYER FOR RELIEF

WHEREFORE, on behalf of himself and members of the class, Mauthe prays for the following relief:

1. That Versa Cardio be enjoined from engaging in future telemarketing in violation of the TCPA;

2. That Versa Cardio, its agents, or anyone acting on its behalf, be enjoined from altering, deleting or destroying any documents or records that could be used to identify the class members;

3. That this Court certify the claims of Mauthe and all others similarly situated as class action claims as provided by Rule 23 of the Federal Rules of Civil Procedure;

4. That Mauthe and the other members of the class action so certified be awarded \$500 for each negligent violation of the TCPA by Versa Cardio and \$1,500 for each willful violation;

5. That the Court enter an appropriate order enjoining Versa Cardio, its agents, or anyone acting on its behalf, from altering, erasing, changing, deleting, destroying or otherwise disposing of any records, including computer disks or computer programs, in its possession or control which can be used to identify all

persons, corporations, or other entities to whom Versa Cardio have transmitted unsolicited facsimile advertisements; and

6. That Mauthe and the members of the class be granted such other and further relief as is just and equitable under the circumstances.

JURY DEMAND

Mauthe requests a jury trial as to all claims of the complaint so triable.

Respectfully submitted,
Shenkan Injury Lawyers, LLC.

Richard Shenkan
Shenkan Injury Lawyers, LLC
Attorney ID 79800
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West Bloomfield, MI 48323
(248) 562-1320
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mmccue@massattorneys.net
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Attorneys for Plaintiff and Proposed Class

JS 44 (Rev. 12/12)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS
Robert Mauthe, M.D., P.C.

DEFENDANTS
Versa Cardio, LLC.

(b) County of Residence of First Listed Plaintiff Lehigh County, PA
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant Sacramento, PA
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(c) Attorneys (Firm Name, Address, and Telephone Number)
Richard Shenkan / Shenkan Injury Lawyers, LLC.
6550 Lakeshore St., West Bloomfield, MI 48323
(248) 562-1320

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	T.C.P.A.		

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
47 US 227

Brief description of cause:
Outlawed telemarketing via unsolicited facsimile.

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$ 75,000.00 +

CHECK YES only if demanded in complaint:
JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE 04/02/2015
SIGNATURE OF ATTORNEY OF RECORD 

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____



FAX COVER SHEET

From: Versa CardioCover Sheet Plus 1 Pages

Thank you for considering our services.

We are a leading provider of cardiac monitoring services to physicians and Healthcare facilities around the country. We enable physicians the ability to perform and be reimbursed for cardiac testing without investment. We provide everything required, including the Cardiac monitoring devices, supplies and billing instructions FREE.

Simply put, you keep our cellular cardiac monitors in your office and use them whenever you need. Your office simply attaches 3 electrodes, inserts battery, and sends the patient home... we do the rest. The patients can be monitored for 48-hours and up to 30 days as needed. We email and fax you results the next day and ongoing update reports throughout the monitoring period. With our technology, there is no manual uploading or sending us anything! Our cardiac monitoring devices transmit "live" data securely over cellular data networks, making our cardiac services one of the easiest in the industry. Our devices are a "single" small cardiac monitor using cellular technology to deliver live 24/7 technician attended monitoring. In the case of an emergency we can inform and deliver results on an ongoing basis. This new form of monitoring is similar to holter monitoring, but also provides emergent results as necessary and up to 30 days of patient monitoring. Our mobile cardiac telemetry monitoring is similar to Holter and Event monitoring combined, but much more effective!

Monitoring the patient's ECG data "live" is not the only benefit to using our services. Your office is reimbursed for the professional components like any other diagnostic tests you provide. We provide the billing codes and diagnostic codes. Increase your revenues without sending the patient out for testing.

Using our FREE service is More Profitable than using the hospital or sending the patient elsewhere and easier to perform than an EKG. Your office bills the patients insurance for the professional components; ie. hookup and interpretation. Our office charges the patients insurance for the technical component...Easy As 1-2-3!

Sincerely,

David
(855) 329-2233

The information contained in this facsimile transmission is privileged and confidential and is intended only for the use of the recipient listed above. If you are neither the intended recipient or the employee or agent of the intended recipient responsible for the delivery of this information, you are hereby notified that the disclosure, copying, use or distribution of this information is strictly prohibited. If you have received this transmission in error, please notify us immediately by telephone at **1-855-329-2233** to arrange for the return of the transmitted documents to us or to verify their destruction. Please contact us to verify receipt of this Fax or to report problems with the transmission. You may also call toll free to **877-529-3651** to be added to our do-not-fax list. Thank you.



Need additional Revenues?

Increase revenues today 1-855-329-2233

**✓ VERSA
CARDIO**
1-855-329-2233

Holter/Telemetry

\$465 Per Test*
3 Electrodes
Monitored 24/7 (Up to 30 Days!)

Easy as 1-2-3!

Maximize reimbursement, 1-855-329-2233



We provide:

- FREE Cellular EKG Monitors!
- FREE Supplies!
- You Bill Patients Insurance
- No Investment!



Welcome. Physician Assistants, Family Practice, General Practice, Internists and Cardiologists

✓ How you get paid:

- You bill Insurance for Professional Codes, up to \$465+.

✓ How we get paid:

- Our office bills insurance for the Technical Component.

Zero Investment Increase Revenues

1. Place 3 Electrodes
2. Insert Battery
3. Bill Insurance

How Does it Work?

Versa Cardio allows our advanced cellular cardiac monitors to remain in your office for convenience without cost. New cellular telemetry combines holter/event monitoring all in a single monitor with added "live" emergent results. It's never been easier! We send your office monitors, all supplies and simple instructions FREE! Simply place three electrodes and your done! Patient is monitored live via cellular signal while the patient goes about their daily activities, results in minutes. It's that Easy. No sending flash cards, No uploading, No waiting days for shipping. Using our FREE service is More Profitable for your office than sending the patient elsewhere.

Simple as 1-2-3! Call 1-855-329-2233 and INCREASE REVENUES! **It's That Easy!**

www.versacardio.com

EXHIBIT

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FROM: 877-619-4168 TO: 16107917693

10/30/14 14:58 Pg 1 of 2



FAX COVER SHEET

From: Versa Cardio

Cover Sheet Plus 1 Pages

Thank you for considering our services.

We are a leading provider of cardiac monitoring services to physicians and Healthcare facilities around the country. We enable physicians the ability to perform and be reimbursed for cardiac testing without investment. We provide everything required, including the Cardiac monitoring devices, supplies and billing instructions FREE.

Simply put, you keep our cellular cardiac monitors in your office and use them whenever you need. Your office simply attaches 3 electrodes, inserts battery, and sends the patient home... we do the rest. The patients can be monitored for 48-hours and up to 30 days as needed. We email and fax you results the next day and ongoing update reports throughout the monitoring period. With our technology, there is no manual uploading or sending us anything! Our cardiac monitoring devices transmit "live" data securely over cellular data networks, making our cardiac services one of the easiest in the industry. Our devices are a "single" small cardiac monitor using cellular technology to deliver live 24/7 technician attended monitoring. In the case of an emergency we can inform and deliver results on an ongoing basis. This new form of monitoring is similar to holter monitoring, but also provides emergent results as necessary and up to 30 days of patient monitoring. Our mobile cardiac telemetry monitoring is similar to Holter and Event monitoring combined, but much more effective!

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Holter/Telemetry

\$465 Per Test*

3 Electrodes

Monitored 24/7 (Up to 30 Days!)

Easy as 1-2-3!



Maximize reimbursement, 1-855-329-2233



We provide:

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- FREE Supplies!
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www.versacardio.com

EXHIBIT

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28

FROM: 877-619-4168 TO: 16107917693

10/06/14 10:28 29 1 01 4



Cardiac Diagnostic Services
1-855-329-2233

FAX COVER SHEET

From: Versa CardioCover Sheet Plus 1 Pages

Thank you for considering our services.

We are a leading provider of cardiac monitoring services to physicians and Healthcare facilities around the country. We enable physicians the ability to perform and be reimbursed for cardiac testing without investment. We provide everything required, including the Cardiac monitoring devices, supplies and billing instructions FREE.

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David
(855) 329-2233

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EXHIBIT

3A

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FROM: 877-619-4166 TO: 1010/11/1053

10/05/11 10:10:11

Need additional Revenues?

Increase revenues today 1-855-329-2233

VERSA
CARDIO
1-855-329-2233

Holter/Telemetry

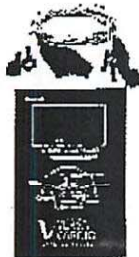
\$465 Per Test*

3 Electrodes

Monitored 24/7 (Up to 30 Days!)

Easy as 1-2-3!

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Simple as 1-2-3! Call 1-855-329-2233 and INCREASE REVENUES! **It's That Easy!**

www.versacardio.com

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